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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CHICAGO, ILLINOIS

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FILE

September 2, 1992

**BY HAND**

Hon. Donna R. Searcy  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Ex Parte Presentation  
Regarding CC Docket No. 92-90

Dear Ms. Searcy:

In accordance with the Commission's Rules regarding ex parte presentations, this is to inform you that representatives of IDS Financial Corporation, a wholly owned subsidiary of American Express Company, met with the following Commission staff today in connection with the referenced rulemaking proceeding:

Kathleen Abernathy  
Brian Fontes  
Linda Oliver  
Madelon Kuchera  
Charla Rath

The substance of the presentations is summarized on the attached handout, which was provided to each of the above staff members.

Respectfully submitted,

*Kevin S. DiLallo*

Kevin S. DiLallo  
Attorney for  
American Express Company

Enclosure

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IDS Financial Services, Inc.  
9/2/92 Ex Parte Visit

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1. **IDS DOES NOT MAKE SALES DURING ITS CALLS. CALLS SUCH AS THIS ARE NOT SUBJECT TO THE ACT AND SHOULD NOT BE SUBJECT TO ANY REGULATIONS LIMITING LIVE TELEPHONE SOLICITATION.**
  - Our financial planning business is ultimately conducted face to face.
  - Our planners never try to complete a sale or encourage that an investment be made during a phone call to a prospective client. We make telephone calls in an effort to initiate relationships.
  - In our experience very few consumers object to our calls.
  - TCPA authorizes the Commission to restrict live calls only to the extent that (1) they constitute telephone solicitation and are (2) calls to which consumers object. Calls placed without the intent of completing a sale are not within the scope of the definition of "telephone solicitation" and should not be restricted. Moreover, few consumers find such calls objectionable.
    - There are a number of existing state telephone solicitation laws which provide an exception for calls that do not involve an intent to complete a sale during the call. Pending federal legislation aimed at preventing telephone fraud has also distinguished the kind of call IDS makes from calls involving a sale over the phone.
2. **IF IDS IS SUBJECT TO TCPA, THE COMPANY DO NOT CALL LIST WOULD BE THE LEAST OBJECTIONABLE OPT-OUT APPROACH AND WOULD GIVE CONSUMERS THE MOST FLEXIBILITY.**
  - Provides the greatest opportunity for exercise of consumer choice.
  - Would be significantly less costly and difficult for companies to administer than a national database.
3. **A NATIONAL DATABASE IS UNWARRANTED AND TOO COSTLY.**
  - Would deny consumers a choice and flexibility.
  - Would pose significant implementation problems that would frustrate consumer desires.
  - Costs to business would be significant, unjustified and benefits would be outweighed by disadvantages.
  - Experience in Florida and Oregon indicates very little consumer interest in this all or nothing approach.
  - National database mechanism would go far beyond what is necessary to protect consumers from telephone solicitations to which they object.

**4. THE COMMISSION'S GUIDELINES SHOULD GIVE BUSINESSES THE FLEXIBILITY THEY NEED TO ADAPT THE DNC MECHANISM TO THEIR UNIQUE CIRCUMSTANCES**

- The Commission's guidelines should permit a company to require that individuals make the request to be placed on the DNC list themselves, by making a toll-free call to the company.
  - If IDS becomes subject to a DNC opt-out requirement, as a responsible company, we will endeavor to implement procedures to ensure it is implemented in a manner which satisfies the law and does not frustrate consumer intent. However, IDS planners and many other individuals representing firms which make calls will not have computers or other forms of technology at their disposal to enable them to accurately and efficiently capture consumers' requests. These individuals are highly decentralized and reliant on manual practices.
  - Lacking appropriate technology, it would be very difficult for IDS planners to avoid errors in capturing and transmitting the information, which could lead to consumers' desires being frustrated. It would require an expenditure of millions of dollars beyond the estimates we included in the reply comment to provide them with this technology.
  - From our experience, we believe that requiring consumers to make a toll free call is not unduly burdensome to the consumer, ensures effectuation of the consumer's opt-out request, is cost-effective and properly balances consumer and business interests.
- Companies need to have a reasonable period of time to add someone's name to the DNC list and distribute the updated list. We recommend 60 days, given the fact that for IDS and many other firms, preparing and distributing the list will be a manual process.
- Companies should be allowed to give consumers the flexibility to choose whether to opt-out perpetually or for a specified period of time. We believe that many consumers who are not currently interested in a firm's products and services, but may be interested in the future, would elect to opt-out for a specified period of time.
- The Commission's guidelines should clarify that consumers requesting to be placed on the DNC list for one company will not automatically be placed on the DNC list for such company's parent, affiliates or subsidiaries. The DNC request should be applied only to the specific entity making the call. Further, companies should be permitted to require that consumers contact the individual entity whose calls they do not wish to receive in order to be placed on that entity's DNC list.

The American Express companies, like many other large organizations, have distinct and highly decentralized business operations. It would be extremely expensive, burdensome, and in the case of IDS and Shearson, anti-competitive to require that a request received by one business be conveyed to another.

**5. THE COMMISSION'S REGULATIONS SHOULD RECOGNIZE AND PROVIDE FOR THE EXEMPTIONS SET FORTH IN TCPA**

- **Established business relationship.**
  - We endorse the Commission's proposal in the NRPM that this exemption should encompass (1) any voluntary two-way communication between the parties, regardless of transfer of money, goods, or services and (2) agents of the parties acting on behalf of their principals who have a business relationship with the calling firm. We believe that the exemption should encompass existing and ongoing, as well as sporadic relationships.
- **Permission or invitation for a call .**
  - The Commission's rules should merely incorporate the exemption set forth in the statute, but should not prescribe the way in which the request or invitation must be made.

**6. THERE MUST BE A REASONABLE TRANSITION PERIOD FOR COMPLIANCE WITH ANY OPT-OUT METHOD**

- IDS needs at least 18 months to comply with a company do not call opt-out requirement. Even with IDS' 800 number, it is a fairly manual process and it is going to take IDS this long to develop and implement nationwide training and supervisory procedures and establish an efficient method of getting lists out to 7,100 individual planners to ensure compliance.

**7. COMMISSION'S RULES SHOULD ESTABLISH AN AFFIRMATIVE DEFENSE AS A SAFE HARBOR.**

- A company that can demonstrate good faith efforts to comply with the required procedures should be entitled to an affirmative defense of compliance with TCPA, as contemplated and provided in TCPA. Anything less than an affirmative defense could expose firms that do telemarketing to a flurry of frivolous litigation resulting in great cost to the firms, with no additional benefit to consumers or to privacy interests in general.